

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0057
Indiana Corporation Income Tax
For The Tax Periods: 1992 through 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. **Indiana Corporation Income Tax**: Gross Income Tax

Authority: IC 6-2.1-2-1

Taxpayer protests that the denominator used in the auditor's projected sample does not include all sales from the sampled period.

II. **Indiana Corporation Income Tax**: Gross Income Tax

Authority: 45 IAC 1-1-33

Taxpayer protests the adjustment for freight income included in taxable gross income.

III. **Indiana Corporation Income Tax**: Gross Income Tax

Authority: 45 IAC 1-1-34

Taxpayer protests a credit to their management fee account that it contends is not a taxable gross receipt but the correction of an overcharge.

STATEMENT OF FACTS

Taxpayer is a manufacturer and distributor of standardized rubber products. The taxpayer produces various grommets, bushings and inserts. These products are purchased by customers using a catalog and shipped via common carrier. Occasionally, products are picked up.

Additional facts will be provided when necessary.

I. **Indiana Corporation Income Tax**: Gross Income Tax

DISCUSSION

Taxpayer contends that the denominator used in the auditor's projected sample does not include all sales from the sampled period.

Taxpayer signed an Agreement for Projecting Audit Results, Form AD-10A; this agreement details the following:

The audit will sample the customer sales reports for the period 1/31/94 to 7/3/94. The total sales found to be an Indiana destination sale or customer picked up sale in Indiana will be used as a numerator. The total sales, for the same period, will be used as a denominator. The resulting percentage will then be multiplied to the total sales for each fiscal year audit period. The result will become the projected sales subject to the Gross Income Tax for each audit period.

Taxpayer agrees with the sales determined to be Indiana sales within the sample period. Taxpayer asserts that the denominator did not include all sales from the audit period. The number calculated is correct based upon the sales report submitted by taxpayer. Taxpayer did not submit any additional information to show the existence of any sales not included in the denominator used in audit.

FINDING

Taxpayer's protest is denied.

II. **Indiana Corporation Income Tax**: Gross Income Tax

DISCUSSION

Taxpayer protests the adjustment for freight income included in taxable gross income. Pursuant to 45 IAC 1-1-33, taxpayer's receipts of freight reimbursements by its purchasers (customers) are not subject to gross income tax.

If freight is at the purchaser's expense and it is advanced on his behalf by the seller, the seller's reimbursement for such expense by the buyer is not subject to gross income tax. If there is an F.O.B. point mentioned in the contract and it is at the origin of shipment, this indicated that any further expense of delivery is at the expense of the purchaser. 45 IAC 1-1-33.

In this case, taxpayer pays the shipping expense and bills the customer. The customer is billed F.O.B. taxpayer's shipping dock. To the extent that taxpayer receives freight charge reimbursements for shipping expense advanced on behalf of its customers and the F.O.B point is at the origin of shipment, the receipts are not subject to Indiana Gross Income Tax.

FINDING

Taxpayer's protest is sustained.

III. **Indiana Corporation Income Tax**: Gross Income Tax

DISCUSSION

Taxpayer protests a credit to their management fee account that it contends is not a taxable gross receipt but the correction of an overcharge. Citing 45 IAC 1-1-34, taxpayer argues that these are expense adjustments for overpayments. Taxpayer contends that these are refunds not subject to gross income tax. However, taxpayer's receipts for reimbursement of corporate management fees are actually constructive receipts subject to gross income tax. Pursuant to 45 IAC 1-1-10, payment by a third party of taxpayer's expenses constitutes a receipt to the taxpayer if it is for the direct benefit of the taxpayer. Taxpayer did not present any information to prove these receipts are refunds rather than constructive receipts. Therefore, the receipts are subject to Indiana Gross Income Tax.

FINDING

Taxpayer's protest is denied.